



THE INTERIM

September 2012

A monthly newsletter of the Montana Legislative Branch

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The Interim is published by:

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The Interim, along with up-to-date information about interim committees, is also available on the Legislative Branch website at www.leg.mt.gov.

Montana Represented at NCSL Annual Summit

Montana sent a contingent of legislators and staff to the National Conference of State Legislatures Annual Summit in Chicago in early August. Rep. Elsie Arntzen, who serves on the NCSL Executive Committee, attended, as did Reps. Christy Clark, Mary McNally, Jon Sesso, and Kathleen Williams. Senators attending included Christine Kaufmann, Mitch Tropila, and Art Wittich. Five staff from Legislative Services and three staff from the Legislative Fiscal Division also were able to attend.

Sonia Gavin, information resources manager for the legislative branch, was inducted as the incoming secretary of the Legislative Reference Librarian Section. Research Analyst Sonja Nowakowski, on behalf of the Environmental Quality Council, received a 2012 Notable Documents Award for the publication *'The Coke Can from Columbus: An Analysis of Methods for Increasing Recycling and Solid Waste Diversion in Montana.'*

Plenary sessions included:

- a discussion of elections by Democratic and Republican pollsters Peter Hart and Neil Newhouse;
- a talk by historian Doris Kearns Goodwin on Teddy Roosevelt and leadership lessons for current times; and
- a discussion of the roles that government and business can play in creating jobs. Participants in that session were John Engler, former Michigan governor and current head of the Business Roundtable; Edward B. Rust, Jr., chief executive officer of State Farm Mutual and chairman of the U.S. Chamber of Commerce; and Douglas Oberhelman, chief executive officer of Caterpillar, Inc.

NCSL held special tracks on pensions, state budgets, and energy. Attendees expressed their appreciation for sessions on:

- ways to research history and legislative intent;
- the importance of building strong relationships for legislative success;
- the role of nonpartisan staff;
- recent U.S. Supreme Court decisions;

- communication tools for navigating uncertainty;
- lessons in ethics, with a frank discussion with former lobbyist Jack Abramoff, who was convicted of charges related to his lobbying efforts and other business dealings;
- the role of legislative staff, by Mary Crane; and
- balancing the powers of governors, by Alan Rosenthal, a leading academic expert on state legislatures.

CFHHS Acts on Childhood Trauma, MDC Proposals

Bills to strengthen child abuse prevention efforts and reporting requirements for mistreatment of children and of developmentally disabled adults will advance to the 2013 Legislature, following action by the Children, Families, Health, and Human Services Interim Committee.

However, draft legislation that would have resulted in the closure of the Montana Developmental Center (MDC) in Boulder did not win approval at the committee's final meeting in August.

Also at the meeting, members delved into a discussion of how the U.S. Supreme Court's decision on the federal health care law could affect state Medicaid programs.

Two SJR 30 Bill Drafts Approved

The committee considered, took public comment on, and approved as committee bills two new proposals related to its Senate Joint Resolution 30 study of childhood trauma.

LCCF07 would allow the Department of Public Health and Human Services to release reports of child abuse and neglect investigations to some relatives, as well as individuals who are required by law to report suspected abuse and neglect. The bill also requires DPHHS to confirm to anyone who reports suspected abuse that the report has been received and to indicate the type of response that the agency has determined is appropriate.

LCCF10 would transfer \$10 million in general fund to the Endowment for Children in the current fiscal year. Interest from the endowment goes to the Children's Trust Fund to make grants to local prevention programs.

The committee earlier this interim approved two other committee bills related to the SJR 30 study. LCCF04 would create an office of the child and family ombudsman. LCCF05 would require DPHHS to seek national accreditation of its child protective services.

MDC Legislation Considered

The two bill drafts related to MDC stemmed from the committee's June review of the facility for seriously developmentally disabled adults. The review was prompted by the release of a Department of Justice investigative report into a May 2010 sexual assault of a resident by an MDC employee.

Disability Rights Montana asked the committee in June to consider a bill to allow it to receive reports of abuse and neglect at the facility. The group also suggested that the Department of Justice, rather than DPHHS, should oversee the MDC employee responsible for investigating complaints of mistreatment.

The committee in August took public comment on LCCF08, which makes those two changes, and approved introduction of the bill in the 2013 Legislature.

However, members failed to approve a separate proposal to require DPHHS to plan for closure of the facility and move as many residents into community services as possible by June 30, 2015. Several members of the public spoke on LCCF09. Some favored closure, saying that residents could be better served in community facilities. Other speakers — including Boulder residents and officials from unions representing MDC employees — said the draft bill may have unforeseen consequences for residents, employees, and providers of community-based services.

Medicaid Ruling Examined

The committee concluded its monitoring of the state-federal Medicaid program by hearing from several speakers about the potential effects of the U.S. Supreme Court's June ruling on the federal health care law. The Patient Protection and Affordable Care Act (PPACA) calls for Medicaid to expand in 2014 to all individuals under the age of 65 with incomes at or below 138% of the federal poverty level. Currently, the program is limited to children, pregnant women, and aged, blind, and disabled adults who generally have incomes well below 138% of poverty. The expansion allows — among others — single, able-bodied adults to enroll in the program, which pays for medical costs.

The federal government will pay 100% of the costs of providing care to the newly eligible individuals through 2016. States will start paying a portion of the costs in 2017, with their share gradually increasing to 10% in 2020.

Under PPACA, states that failed to expand their programs faced the loss of all of their Medicaid funds. However, the Supreme Court severed that penalty, saying it was coercive. The action essentially made the Medicaid expansion optional for states.

Speakers from three governmental consulting firms discussed how the ruling could affect states. They also suggested factors that states may want to consider when deciding whether to expand their Medicaid programs.

Paul Hencoski of KPMG noted that the states could receive a significant amount of federal funds for covering the expanded population, particularly in the first three years of the expansion. He also noted that hospitals in states that don't expand their programs could be hit with both lower federal payments for providing care to Medicaid patients while continuing to shoulder the costs of uncompensated care. The federal payments for providing care to high numbers of Medicaid patients are slated to decrease as the Medicaid expansion takes place.

Laura Summers of Leavitt Partners said states need to look at the costs of both expanding and not expanding their programs. Although the federal government will pay all the medical costs of the new enrollees, states will still have to pick up half of the program's administrative costs. She said those costs are likely to increase because states will be serving many more people. Summers also said states need to consider whether they have enough medical providers to handle higher numbers of patients.

Jim Hardy of Deloitte said that the private insurance market could be affected if states choose not to expand Medicaid. Insurers may raise premiums on the belief that lower-income people buying insurance may have higher health risks and more severe medical conditions than they would have if they had been covered through the Medicaid expansion. People who don't qualify for Medicaid may put off seeing a doctor until they have the private coverage, he said.

Gregg Davis of the University of Montana Bureau of Business and Economic Research told the committee that 47,000 to 55,000 Montanans could qualify for the Medicaid expansion. The estimates were based on an extensive survey that the bureau conducted to determine the insurance status of Montanans. The survey included information about income, allowing the bureau to estimate the size of the expansion population.

Davis also said the expansion could cost the state anywhere from \$70 million to \$119 million by 2020, when it would be paying 10% of the costs. The actual cost would depend on the number of enrollees and the growth in medical costs each year, he said.

All of the speakers said general estimates of the size and cost of the expansion can be made now. However, they said the state would need to conduct a detailed actuarial study before it would have a full picture of the likely costs of either expanding the program or maintaining the status quo.

DPHHS Director Anna Whiting Sorrell said the agency will be looking at various costs as it makes a decision on whether to suggest that the state expand the program.

More Information

Additional information about the committee's work and its decisions is available on the committee's website or by contacting Sue O'Connell, committee staff. The web site contains links to pages that discuss the SJR 30 study of childhood trauma, the House Joint Resolution 8 study of childhood hunger, the committee's Medicaid monitoring activities, and all reports and proposed legislation prepared for the committee.

Committee Website: www.leg.mt.gov/cfhhs

Committee Staff: soconnell@mt.gov or 406-444-3597

Panel Adopts Tentative House Districts

At the end of a week-long meeting last month, the Montana Districting and Apportionment Commission voted to adopt a tentative redistricting plan containing 100 state House districts. The commissioners stressed that the plan was tentative and reserved the right to suggest and make changes at future commission meetings.

The commissioners met starting on Monday, Aug. 13, and continued to discuss, revise, and adopt House districts until 10 p.m. on Friday, Aug. 17. The resulting 100-district map is named the Tentative Commission Plan. Later this fall, the commissioners will meet to pair the House districts into 50 state Senate districts.

Maps of the tentative House districts are now available on the commission's website, along with reports detailing statistics about the districts.

Plenty of Time Left for Public Comment

The public is invited to weigh in on the Tentative Commission Plan by writing, e-mailing, or faxing the commission. As the commission stressed throughout the August meeting, all districts are tentative until the commission finalizes the plan in early 2013. Comments on the work done to date or suggestions for future changes are all welcomed.

Please note that all comments are copied and distributed to each commissioner and become part of the commission's permanent, public record. The comments also are posted on the commission's website.

Written comment may be sent by regular mail to the Districting and Apportionment Commission, Legislative Services Division, P.O. Box 201706, Helena, MT, 59620-1706. Comments also may be sent by e-mail, to districting@mt.gov, or by fax, to 406-444-3036.

More Meetings Planned

The commissioners also will hold at least two more public hearings. In November, the panel will take comments on various options for state Senate pairings. The commission will hold a December hearing in Helena on the entire plan for 100 House districts and 50 Senate districts.

Although the commission's next scheduled meeting is Nov. 15 at the Capitol, the commission might add a meeting earlier in the fall to make amendments to the House districts. To stay up to date with additional commission meetings and activities, please sign up on the commission's website to receive e-mail updates.

For more information on the commission's activities and upcoming meetings, visit the committee's website or contact Rachel Weiss, commission staff.

Commission Website: www.leg.mt.gov/districting
Commission Staff: districting@mt.gov or 406-444-5367

EAIC Exits Interim with Health Reform, Board Reviews

The Sept. 11 meeting of the Economic Affairs Interim Committee will feature reviews of two studies undertaken by the committee this interim: one on health insurance exchanges and another on professional and occupational licensing boards.

The health insurance exchange report, required under House Joint Resolution 33, covers the committee's activities in the interim along with a review of insurance changes under the federal Patient Protection and Affordable Care Act and background information regarding health insurance exchanges. Public comment will be accepted on the report and on health insurance exchanges.

The report on professional and occupational licensing boards sums up the first portion of a study required under House Bill 525, which was approved by the 2011 Legislature. The bill called for reviewing half of the licensing boards during this interim, starting with the oldest board first. The review is designed to determine if the boards are still meeting their mission of protecting public health, welfare, and safety. All of the 16 boards reviewed by the committee this interim received endorsements to continue, although the committee recommended that some boards work on concerns raised during public comment.

The committee will consider a bill draft, LCbrds, to determine if the 8-year process of review needs to be retained or if a 4-year process, allowing for one full cycle of board reviews, is adequate.

Many Other Topics on Tap

Other agenda items include:

- statutorily required reviews of agency legislation. The agencies under the committee's monitoring responsibilities include the Departments of Agriculture, Commerce, Labor and Industry, and Livestock, as well as the State Auditor's Office, the Governor's Office of Economic Development, and the Montana State Fund;
- review of a bill draft, LCBnfi, to add the Division of Banking and Financial Institutions to the committee's oversight, rather than the oversight of the State Administration and Veterans' Affairs Committee;
- a "state" of the Montana State Fund report, including a review of the state workers' compensation agency's finances;
- an update on concerns raised at an earlier meeting regarding elevator repairs, including the use of apprentices on the repairs;
- an update on medical licensing concerns with a report and possible bill draft from a group of stakeholders representing doctors, hospitals, and licensing boards; and
- reviews of reports required to be presented to the committee, including information from the Department of Commerce on the distressed wood products industry revolving loan program, the quality schools facility grant program, the Board of Housing veterans' home loan mortgage program, and a new requirement for reviews of federal land management proposals if requested by local governments. Also scheduled for required reviews are the Montana Heritage Preservation and Development Commission and the Livestock Loss Production Board.

The committee also will review a bill draft, LCvlfr, that has been prepared for a subcommittee on volunteer firefighter workers' compensation. Among the options to be discussed are whether volunteer firefighters not working in another job should be eligible to receive wage-loss benefits if they are injured while firefighting. Currently, workers' compensation is optional for volunteer firefighters. If a fire agency provides workers' compensation for a volunteer firefighter, a formula is used for paying a wage-loss benefit as well as medical benefits to a firefighter who is not working in another job. (Those working in other jobs may use a different formula.) The bill draft also would require fire agencies to provide workers' compensation for volunteer firefighters and provides a permissive levy for counties to pay the premiums.

Next Meetings

The subcommittee on volunteer firefighters and work comp will meet Sept. 5 at 3:30 p.m. in Room 137 of the Capitol to discuss options for premium payments and benefits for the volunteer firefighters. A previously scheduled Aug. 23 meeting was canceled and rescheduled for Sept. 5.

The full committee's final meeting on Sept. 11 will begin at 8:30 a.m. in Room 137 of the State Capitol. For more information on the committee's activities and the Sept. 5 and Sept. 11 meetings, visit the committee's website or contact Pat Murdo, committee staff.

Committee Website: www.leg.mt.gov/eaic

Committee Staff: pmurdo@mt.gov or 406-444-3594

Wide Range of Topics Slated for Final ELG Meeting

The Education and Local Government Interim Committee will hold its final meeting of the 2011-2012 interim on Sept. 13, with an agenda that runs the gamut of ELG's subject area jurisdiction.

Items related to K-12 education will include a report from the Legislative Fiscal Division's Jim Standaert on school district general funds and the components of Senate Bill 329, which instituted significant changes to K-12 funding and policy statutes. The committee also will discuss and hear public comment on Common Core and Chapter 55 Accreditation Standards, which the Board of Public Education is in the process of adopting. Members also will discuss the associated costs of implementation that are estimated to be borne by school districts.

The State Historic Preservation Officer will report on the condition and maintenance of state agency-owned heritage properties. The report will provide an overview of the process that the Historic Preservation Office, the Historic Preservation Review Board, and the agencies used in order to comply with the requirements of Senate Bill 3, which was enacted in 2011. That bill resulted from the ELG's House Joint Resolution 32 study of historic preservation during the 2009-2010 interim. One of the consistent themes heard during the HJR 32 study involved the absence of consistent formalized reporting of and accounting for state-owned heritage properties. ELG, through its request of SB 3 at the conclusion of the study, sought to establish that consistency.

The agenda also includes legislative previews from the League of Cities and Towns and the Office of the Commissioner of Higher Education. In addition, OCHE will report on the Board of Regents' Affordability Task Force and fiscal year 2012 enrollment.

Education Bill, Subdivision Exemptions to Be Reviewed

ELG plans another look at a bill draft requested by Sen. Bob Hawks that would require all counties in which a two-year postsecondary institution or program is located to levy 1.5 mills for support of those programs. The committee discussed the draft at its June meeting, but did not take any action at that time.

The committee will hear from Rep. Matt Rosendale and Sen. Tom Facey on an additional option to emerge from the HJR 39 study of subdivisions for lease or rent. ELG considered five bill drafts in June, each attempting to address problems that had been identified with local government interpretation of the laws governing exemptions for subdivisions for lease or rent. Rep. Elsie Arntzen, presiding officer of the committee, asked Rep. Rosendale and Sen. Facey to identify and develop any additional proposals based on testimony presented at the June meeting and on information presented by members of the working group that had been meeting on the matter.

Following an update on the 2012 wildland fire season, ELG will conclude by reviewing its interim work plan items and how it conducted its business over the last 15 months. Members also may propose any final recommendations for consideration by the committee.

Final Meeting

The committee's Sept. 13 meeting will begin at 7:30 a.m. in Room 152 of the Capitol. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Leanne Kurtz, committee staff.

Committee Website: www.leg.mt.gov/elgc

Committee Staff: lekurtz@mt.gov or 406-444-3593

ETIC to Consider Rural Co-op, RPS Bill Drafts

The Energy and Telecommunications Interim Committee will wrap up Sept. 7 and decide whether to pursue legislation related to increased oversight of rural electric cooperatives and changes to Montana's renewable portfolio standard.

ETIC members will spend the morning discussing draft legislation. The committee will first complete a review of Southern Montana Electric Generation and Transmission Cooperative Inc. and its recent bankruptcy and reorganization. The committee has been taking public comment on proposed legislation that imposes voting requirements on rural electric cooperatives before they make certain decisions.

The draft bill, LCet01, requires the approval of a two-thirds majority of the distribution cooperative members of a gen-

eration and transmission (G&T) cooperative before the G&T can construct certain facilities or enter into certain contracts. It also requires that two-thirds of the distribution cooperative's board of trustees vote before decisions are made about new generation and certain contracts.

The committee also has been accepting public comment on a proposal to expand the definition of "eligible renewable resource" in Montana's renewable portfolio standard to include hydroelectric project expansions. The ETIC brought a similar proposal to the 2011 Legislature. The bill was vetoed. The committee in July agreed to reconsider the draft proposal, LCet00, which also grants the Public Service Commission authority to establish rules.

During the September meeting, the ETIC will receive two statutorily required reports. The Bureau of Mines and Geology, prior to each legislative session, must update the ETIC on geothermal research that it has conducted and on the funding received for the research. The Department of Natural Resources and Conservation must update the ETIC on studies it has done to review the economic and environmental feasibility of building and operating small-scale hydroelectric power generating facilities on each of the water projects under its control.

Interoperability, Energy Topics Also Under Discussion

Committee members also will learn about statewide interoperability issues. In September 2011, a Statewide Interoperability Governing Board (SIGB) was established. The SIGB directs the operation of the statewide public safety radio system formerly operated by Interoperability Montana. Very generally, interoperability is focused on ensuring that when agencies from multiple jurisdictions need to mount a coordinated response, they are able to talk to each other via their radios in real time.

Rural electric cooperatives also will share their concerns about federal plans to update government-owned portions of the electric grid. A federal plan was unveiled in March, and rural electric cooperatives in Montana are concerned that the proposal will translate to higher costs for its members. A representative from Energy Secretary Steven Chu's office also will share the federal perspective.

The committee will finish the day with reports from DNRC and the Department of Environmental Quality on energy-related permitting. The ETIC dedicated a portion of its time during the 2011-2012 interim to tracking a variety of issues related to the development of energy resources in Montana.

Next Meeting

The Sept. 7 meeting will begin at 8 a.m. in Room 172 of the Capitol. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sonja Nowakowski, committee staff.

Committee Website: www.leg.mt.gov/etic

Committee Staff: snowakowski@mt.gov or 406-444-3078

Audit Division Earns National Award

The Legislative Audit Division was recently awarded a Certificate of Impact from the National Legislative Program Evaluation Society (NLPES) for its work on Montana's Sexual or Violent Offender Registry. The registry is the state's primary database of offender information, with approximately 5,000 sexual or violent offenders registered. The information systems audit reviewed controls over the registry and made five recommendations to the Department of Justice in the areas of access, change management, and data integrity.

NLPES Certificates of Impact are awarded to legislative audit offices for recently released reports that have at least two of the following documented policy impacts: impacts from the Legislature's perspective, impacts from the public's perspective, impacts from other organizations' perspectives, program improvements as a result of implementing audit recommendations, and dollar savings from implementing audit recommendations.

The complete audit of the Sexual or Violent Offender Registry is on the Legislative Audit Division webpage under 11DP-08.

The Legislative Audit Division provides independent and objective evaluations of the stewardship, performance, and cost of government policies, programs, and operations. The division is responsible for conducting financial, performance, and information system audits of state agencies or their programs, including the Montana University System.

To report suspected improper acts committed by state agencies, departments, or employees, call the Legislative Audit Division fraud hotline at 800-222-4446 or 444-4446 in Helena.

Division Website: www.leg.mt.gov/audit

Division Contact: 406-444-3122

RTIC to Consider Bill Drafts in September

The Revenue and Transportation Interim Committee will meet Sept. 13-14 in Helena to receive a fiscal year-end summary, hear information related to the committee's revenue-estimating duties, and wrap up of work on the three studies assigned to the committee. Members also will review agency-requested bill drafts and committee-requested bill drafts.

Principal Fiscal Analyst Terry Johnson will present highlights from the fiscal year that ended June 30. At its July meeting, the committee had requested that educational items related to the revenue estimate be presented at the September meeting, rather than waiting until the November meeting as has been done in the past. IHS Global Insights will present an economic outlook for Montana and the United States. Other speakers will include Paul Polzin of the University of Montana Bureau of Business and Economic Research and Barbara Wagner of the Department of Labor and Industry.

The committee will complete work on its three assigned studies by taking action on the final report summaries for each study. Staff presented reports for the House Joint Resolution 13 study of the individual income tax and the Senate Joint Resolution 23 study of tax exemptions for nonprofits at the July meeting. The updated reports include items that the committee's presiding officer asked be added to the reports. The SJR 23 report also includes a reference to a committee-requested bill draft that will be presented at this month's meeting. The draft bill directs the Department of Revenue to review property tax exemptions for nonprofits and to create a publicly accessible list of exempt property. The report for the SJR17 study of centrally assessed and industrial properties also will be presented.

The committee will consider Department of Revenue and Department of Transportation agency bill draft requests that were deferred from the July meeting, as well as a committee-requested draft to move toward annual reappraisal for certain classes of property. The proposed committee bill provides for one two-year property tax reappraisal cycle to be followed by annual reappraisal in subsequent years. The committee will also consider possible committee bills to clarify, simplify, or repeal certain tax provisions. This item was also deferred from the July meeting.

Next Meeting

The committee meets next on Sept.13-14 in Room 137 of the Capitol with a tentative start time of 9 a.m. on Sept. 13. The committee will reconvene at 8 a.m. on Sept. 14. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Megan Moore, committee staff.

Committee Website: www.leg.mt.gov/rtic

Committee Staff: memoore@mt.gov or 406-444-4496

SAVA Scrutinizes Pension Proposals

The State Administration and Veterans' Affairs Interim Committee voted last month to develop three committee bill drafts, in concert with the Legislative Finance Committee and the Governor's Office. The drafts initially will embody the governor's proposals to fix the estimated \$100 million a year shortfall in funding for the Teachers' Retirement System (TRS) and the Public Employees' Retirement System (PERS).

The action was not a vote of approval of the governor's proposals, but was instead taken so SAVA and the Legislative Finance Committee will have a starting point for further discussion and opportunities to make revisions to the proposals.

Discussion Draft for Teachers' Retirement System

For TRS, which faces a funding shortfall of more than 3.53% of total employee salary (about \$30 million a year), the discussion bill will contain the following provisions for newly hired employees:

- eligibility for full retirement at any age will increase from 25 years to 30 years of service;
- the highest average salary calculation will increase from the highest three consecutive years of salary to the highest five consecutive years of salary; and
- the benefit for a member who attains 30 years of service or more will be increased from 1.67% per year of service to 2%.

The bill draft also calls for a 1% increase in the employee's contribution rate. This increase would apply to all current and future members.

In addition, the discussion draft will divert about \$25 million a year from state land revenue to help fund TRS liabilities until a certain trigger is met. It would provide about \$14.7 million in a one-time-only contribution from local school district operational reserve funds.

Discussion Draft for Public Employees' Retirement System

For PERS, which faces a funding shortfall of more than 6.36% of salary (an estimated \$70 million a year), the discussion bill will contain the following provisions:

- a 1% employee contribution increase (about \$13.7 million) for all current and future members;
- a 1% employer contribution increase (about \$13.7 million);
- a state supplemental contribution (about \$18.1 million); and
- additional local government contributions (about \$24.5 million) from unspecified sources.

Discussion Draft for Smaller Retirement Systems

For the remaining smaller public employee retirement systems that have unfunded liabilities that do not amortize in 30 years or less — such as the systems for highway patrol officers, sheriffs, and game wardens and peace officers — a third discussion bill will be drafted to mirror the governor's proposed fix to PERS. The bill draft may later be amended to include the Municipal Police Officers' and Firefighters' Unified Retirement Systems if the fiscal year 2012 actuarial valuations for these two systems show that they, too, have unfunded liabilities that do not amortize in 30 years or less given current contributions and benefits.

Legal Considerations of Proposed Changes

The contribution increases for current employees that are contained in the governor's proposals raise legal questions about contract impairment. Legal analysis provided to both SAVA and the Legislative Finance Committee at a joint meeting in June noted that contract rights are not absolute. However, it also said that if statutory revisions affecting current members are to be upheld if litigated, the courts would have to follow the theory of contract amendments announced in *U.S. Trust Company of New York v. New Jersey* and hold that either:

- the statutory change is not a substantial impairment; or
- if the change causes a contract impairment and the impairment is substantial, it is nevertheless reasonable and necessary under the circumstances.¹

The analysis also noted that alternatives that impair contracts cannot be the first or only solution resorted to and that less drastic impairments must be seriously considered before more substantial impairments. Ultimately, according to the analysis, “it will not be sufficient for the legislature to give only cursory consideration to scenarios that would not impair the contract.”²

Other Pension Proposals on the Table

Statute requires that the committee solicit and review retirement proposals likely to be introduced in the next legislative session and make recommendations to the Legislature on whether the proposal should be passed or amended.

At its June meeting, the committee reviewed proposals submitted by the retirement boards. The TRS board submitted four proposals. One of the proposals was to address the unfunded liabilities of TRS in a manner similar to the governor's proposal outlined above. The PERS board proposed

nine bills. The board's bill to address unfunded liabilities for PERS and the other systems administered by the board calls for an increase in employer contributions and additional funding from other sources not yet specified. The bill differs from the governor's proposal in that it does not propose an increase in current member contributions.

The committee held a hearing on each of the retirement proposals that legislators and stakeholders submitted for SAVA's review. The proposals are summarized below.

- *MEA-MFT (affecting TRS)*: Repeal 25-year full retirement and replace it with 30-year full retirement at age 60, provide a 2% multiplier for 30 or more years of service, amend final average salary to five years instead of three years, and permit early retirement at age 55.
- *Association of Montana Retired Public Employees (affecting PERS, TRS, GWPORS, and SRS)*: Require a portion of the expendable portion of the coal severance tax revenue to be deposited to these pension trust funds to pay accrued unfunded liabilities.
- *Montana Police Protective Association (affecting MPORS)*: Revise the definition of “compensation” to include all compensation.
- *Montana Sheriffs' and Peace Officers' Association (affecting SRS)*: Revise the benefit to be paid to the surviving spouse or children so it equals the member's benefit, as provided for in MPORS.
- *Association of Public Safety Communications Officers (affecting PERS and SRS)*: Allow public safety dispatchers to join SRS in order to receive a full retirement benefit after 20 years of service.
- *Montana Association of Counties (affecting PERS)*: Revise membership of PERS Board to include local employer representation.
- *Sen. Art Wittich (affecting all systems that are actuarially unsound)*: Provide monetary incentives and a window of opportunity for current members to transfer voluntarily to the PERS Defined Contribution retirement plan.
- *Sen. Dave Lewis (affecting PERS)*: Require all new PERS hires to be covered in the PERS Defined Contribution plan.
- *Sen. Ron Arthun (affecting all systems that are covered by Social Security)*: Establish a new cash balance plan for all new

¹ Montana Legislative Fiscal Division and Legislative Services Division, “Examination of Pension Challenges Through Legal, Policy, Funding, and Fiscal Lenses,” June 12, 2012, p. 5.

² Ibid., p. 6

hires and allow current members to voluntarily transfer to the new plan.

The committee will consider staff analysis and further public comment on each of these proposals, including the proposals by the retirement boards, at a meeting later this fall after the fiscal year 2012 actuarial valuations for the systems have been completed.

HB 142 Business Wrapped Up

The committee wrapped up its examination of statutory advisory councils and reports as required by House Bill 142, which was approved by the 2011 Legislature. Based on its examination, the committee voted to:

- revise section 10-2-102(1)(i), MCA, the veterans' affairs biennial report, to eliminate the requirement to report a needs assessment;
- revise section 2-17-804(3), MCA, to require that the report by the Capitol Complex Advisory Council Report be presented to SAVA by Sept. 15 in the year preceding the regular legislative session;
- revise section 2-18-1103(3), MCA, to require that the Employee Incentive Program report be presented to SAVA by Sept. 15 in the year preceding the regular legislative session;
- revise section 30-9A-527, MCA, which is part of the Uniform Commercial Code, to provide that the required report to the Legislature be made to SAVA by Sept. 15 in the year preceding the regular legislative session and that it only be made if there have been any changes affecting the filing-office rules;
- add to the TRS statutes the same language as provided in section 19-2-405(5), MCA, for the experience study to be reported to the Legislature;
- revise section 19-2-405, MCA, to ensure that a copy of the actuarial valuations of each of the Montana Public Employee Retirement Administration retirement systems be provided to the Legislature as provided in section 5-11-210, MCA; and
- revise section 17-6-230, MCA, to provide that the Board of Investments report be provided to SAVA by Sept. 15 in the year preceding the regular legislative session.

All of the revisions will be contained in one committee bill, sponsored by Sen. Kendall Van Dyk.

Members also approved LCsa04 as a committee bill, to clarify statutes related to agency rulemaking with respect to adoption of federal rules by reference. Earlier in the interim,

members approved LCsa02, requesting an interim study on the structure and duties of the Office of the Commissioner of Political Practices.

Next Meeting

The committee meets next on Sept. 11 in Room 152 of the Capitol. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sheri Scurr, committee staff.

Committee Website: www.leg.mt.gov/sava

Committee Staff: sscurr@mt.gov or 406-444-3596

Three Water Bills Up for Review

The Water Policy Interim Committee will consider three pieces of proposed legislation at its September meeting.

Two bills deal with water wells that are exempt from permitting. Users of exempt wells do not have to obtain a permit. A permit application includes an evaluation to ensure that new uses of water don't affect existing water users, such as irrigators. An exempt well may pump up to 35 gallons per minute as long as the annual volume of water does not exceed 10 acre-feet.

The committee is considering LC 8011 and LC 8012. The bills are revisions of proposals the committee discussed earlier in the year. Both drafts limit the use of the exemption in basins that are mostly closed to surface water appropriations and where new ground water permits face additional scrutiny. These basins largely lie in western Montana.

As drafted, the bills would cover subdivisions in Granite and Ravalli counties as well as portions of the following counties: Teton, Chouteau, Pondera, Missoula, Powell, Lewis and Clark, Deer Lodge, Silver Bow, Beaverhead, Madison, Broadwater, Jefferson, Gallatin, Meagher, and Cascade.

Within those basins, LC 8011 would require the use of public water and sewer systems — rather than individual wells and septic systems — in subdivisions of 20 or more lots that have an average lot size of three acres or less. Owners of lots in new subdivisions that are not covered by that provision would be allowed an individual water well that pumped 10 gallons a minute or less and consumed less than 1 acre-foot of water a year.

LC 8012 would limit subdivisions in those same basins to a total appropriation of water of 35 gallons per minute up to 10 acre-feet per year, no matter the number of wells.

The committee also will consider LC 8010 to clarify the taxation and ownership of river channels changed by avulsion, which is a sudden and perceptible change in the course of a

river or stream that results in the creation of a new river or stream channel.

Next Meeting

The committee meets next on Sept. 10-11 in Room 172 of the Capitol. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Joe Kolman, committee staff.

Committee Website: www.leg.mt.gov/water

Committee Staff: jkolman@mt.gov or 406-444-3747

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Looking Ahead: Fiscal Issues Facing the 63rd Legislature

**by Barb Smith
Assistant Principal Fiscal Analyst**

In the fiscal world, the books have been closed for fiscal year 2012 and the budgeting process for fiscal years 2014 and 2015 has begun. When the curtain goes up on the 63rd Legislature, fiscal issues such as large immediate costs from fires, small fiscal notes attached to legislation, economic conditions, federal funding changes, and everything in between will be on the legislative agenda.

The staff of the Legislative Fiscal Division has summarized major items that more than likely will be discussed during the 2013 session as the state budget is set and financial policy created. Each of these items is being tracked or further examined by the division and will be covered in more detail in *Legislative Budget Analysis Volume 1: Statewide Perspectives*, to be released in late December.

Outlook for the Economy

The status of the economic recovery will be of interest to the 2013 Legislature. Following are some forecast highlights from IHS Global Insight as of August 2012.

- The recovery has lost momentum, but has not ground to a halt.
- Second-half growth may slow this year, but historical revisions have raised the U.S. Gross Domestic Product (GDP) growth forecast for the year from 2% to 2.1%.
- The firm has cut its forecast for 2013 GDP growth from 2% to 1.8% and kept the U.S. recession risk at 25%.
- A deeper euro zone recession and a harder landing in China remain the principal downside risks.

- The lame-duck Congress will postpone the year-end fiscal cliff for a few months, placing the problem in the hands of the next president and the new Congress.
- Another round of quantitative easing, concentrated on mortgage-backed securities, will be announced by the Federal Reserve in September.

In short, Global Insight is assuming slow growth throughout the U.S. economy. Forecast growth in GDP is 2.1% in 2012, 1.8% in 2013, 2.8% in 2014, and 3.5% in 2015. Because of oil and gas development, Montana's economy may be in a somewhat better position.

Impacts of Natural Resources Development

Production of oil, gas, and coal resources is expected to increase in the upcoming years, and these activities have significant impacts on local governments. Extraction activities bring new populations to communities, often creating stresses on local government infrastructure and services.

Montana county governments receive distributions from oil and natural gas taxes and royalty income from oil, gas, and coal extraction. However, cities and towns do not receive direct financial benefits from extraction activities. As populations increase, communities struggle to find the means to pay for necessary infrastructure and provide services to support the growth.

As an example, the town of Sidney, in the heart of the Montana Bakken oil boom, has an estimated need of \$21 million in fiscal years 2012 and 2013 for capital improvement projects that include water, wastewater, city road, and housing

improvements to accommodate the new growth. However, current revenues will not support the costs of the upgrades.

Additional financial pressures are felt from the need for increased school expenditures and expanded police forces. The financial stresses are exacerbated by the oil and gas tax holiday, which reduces oil and gas tax payments in the initial 18 months of production.

During the 2013 session, legislators likely will consider the difficulties being experienced by local governments and schools in close proximity to natural resource extraction activities. They may look at assisting local governments with costs related to population growth.

Uncertainty Over Federal Funds

The federal government has run a large budget deficit that began in earnest in the early years of the last decade and was accelerated by a number of factors, the latest being the Great Recession. In August 2011, Congress passed the Budget Control Act of 2011. The budget reduction measures included in that law fall into two categories:

- a reduction in the spending caps of the federal appropriations bills; and
- across-the-board reductions, with some exceptions, triggered by the failure of the budget “supercommittee” to make deficit reduction recommendations.

Following are a few facts to consider.

- Federal Funds Information for States (FFIS) estimates that about 80% of federal funds that pass through the state budget will be exempt from the required reductions, leaving about 20% subject to reduction.
- Using the general outlines and assumptions of FFIS, the Council of State Governments has estimated the Montana impact from federal fiscal year 2011 to federal fiscal year 2013 at about \$48 million, or an estimated 9% reduction in state and local grant programs subject to reduction. Other estimates suggest an 8% to 9% reduction in 2013, in addition to an estimated overall reduction of 2.7% in 2012.

In September, the division will provide the Legislative Finance Committee with an opportunity to examine such reductions as part of the global motions recommendations for the appropriations subcommittees that will meet next year.

Impact of Affordable Care Act

As a result of the U.S. Supreme Court decision regarding the Patient Protection and Affordable Care Act, a state decision to opt out of the planned Medicaid expansion would no longer result in the loss of all other Medicaid dollars.

The decision effectively eliminated the stick in this situation. The carrot still exists, however, with 100% federal funding of the medical costs for individuals who are newly eligible under the expansion, through 2016. The federal matching rate would decline gradually to 90% in 2020, leaving states to pick up 10% of the medical costs for the newly covered population in 2020 and subsequent years.

The federal law required states to increase their Medicaid programs to provide coverage to all individuals who are under the age of 65 and who have incomes of, essentially, 138% or less of the federal poverty level. The expansion became optional with the Supreme Court’s ruling in June.

A May 2010 report from the Kaiser Commission on Medicaid and the Uninsured estimated the proposed expansion would increase Montana’s Medicaid costs by \$100 million and bring in more than \$2 billion in federal money from 2014 through 2019, compared to a baseline projection without expansion of the program. This would effectively be a 27.9% total Medicaid cost increase, with a 3.7% state spending increase and a 40% federal spending increase.

Adequate Funding for Pensions

Adequate funding of defined benefit pension plans in Montana and elsewhere has historically been challenging from time to time. The challenges lately have risen to unforeseen dimensions, both since and because of the declines in the financial markets in the past decade and, to some extent, the enactment of changes in benefits.

The Montana Constitution requires that the public pension systems be funded on an actuarially sound basis. This requirement has been a challenge since 2001. Currently, the systems are significantly underfunded by about \$3.8 billion. Although much of the total liability of public pensions will amortize within 30 years, as planned, this unfunded portion of the total liability is equivalent to approximately one-half of the annual spending for all government services in the state. It exceeds 10% of the Montana Gross State Product.

If these liabilities were paid off over 30 years, the increase in funding necessary to pay off the liability would be about 1.5% of annual spending. Given the significance of this financial liability, the 2013 Legislature may propose changes to the funding of the systems and to the benefits they offer.

Potential for Other State Issues

After two slow fire seasons, fire is back on Montana’s landscape, and suppression costs will need to be funded in the early days of the 2013 session. The fire suppression fund is tapped out, meaning other resources must be used to cover the bill.

For fiscal year 2012, the state incurred \$20 million in fire suppression costs, of which \$3.5 million is reimbursable by other parties. That created a net cost to the state of \$16.5 million. The beginning fire suppression fund balance in that fiscal year was \$20.6 million, leaving an estimated balance of \$4.1 million to be used in the current fiscal year.

As of Aug. 16, the estimated expenses for fiscal year 2013 totaled \$28.2 million, of which \$4.7 million is reimbursable by other parties. The current estimated net cost to the state is \$23.5 million. Available resources are short of expenses and will likely require a supplemental appropriation of at least \$3.6 million general fund for the Department of Natural Resources.

On another front, the costs of personal services are anticipated to be of special interest in the upcoming legislative session. The primary forces driving the interest include:

- the recruitment and retention impacts felt by the lack of inflationary pay increases for state employees for four years; and
- the recruitment, retention, and budget impacts of the pay increases approved by the governor in the spring of 2012.

The Legislative Fiscal Division will have an analysis to address both of these areas for the LFC's September meeting, as well as additional budget analysis in December. The reports will be made available on the division's website.

In Summary

Diverse financial issues await the 63rd Legislature. The *Legislative Budget Analysis* will cover the topics outlined here, and many others, in more depth. In addition, Legislative Fiscal Division staff is working on briefing materials to provide background on many of these matters. The LFC also will hear reports on some of the items at its September meeting.

The committee meets next on Sept. 27-28 in Room 102 of the Capitol, beginning at 10 a.m. on Sept. 27. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Amy Carlson, Legislative Fiscal Analyst.

Committee Website: www.leg.mt.gov/lfc

Legislative Fiscal Analyst: acarlson@mt.gov or 444-2986

Calendar of Legislative Events

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

September						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5 Economic Affairs Subcommittee, Volunteer Firefighters & Workers' Compensation, Rm 137, 3:30 p.m.	6	7 Law & Justice Committee, Rm 137, 8:30 a.m. Energy & Telecommunications Committee, Rm 172, 8 a.m. Legislative Consumer Committee, Rm 405, 1 p.m. State-Tribal Relations Committee, Rm 137, Time TBA	8
9	10 Select Committee on Efficiency in Government , Rm 102, 12:30 p.m. Water Policy Committee, Rm 172, 12:30 p.m.	11 Select Committee on Efficiency in Government , Rm 102, 8:30 a.m. Water Policy Committee, Rm 172, 9 a.m. Economic Affairs Committee, Rm 137, 8:30 a.m. State Administration & Verterans' Affairs Committee, Rm 152, Time TBA	12 Environmental Quality Council, Rm 172, 1 p.m.	13 Education & Local Government Committee, Rm 102, 7:30 a.m. Environmental Quality Council, Rm 172, 9 a.m. Revenue & Transportation Committee, Rm 137, 9 a.m.	14 Revenue & Transportation Committee, Rm 137, 8 a.m.	15
16	17	18	19	20	21	22
23	24	25	26	27 Legislative Finance Committee, Rm 102, 10 a.m.	28 Legislative Finance Committee, Rm 102, 8:30 a.m.	29

October*						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
30 Sept.	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

*As of Sept. 1 no committee meetings were scheduled for October. Please check the legislative website, www.leg.mt.gov, for information about any meetings that may be scheduled for the month.

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